

REQUEST FOR RECONSIDERATION

Reconsideration of the present application is respectfully requested.

Claims 1-12 and 15-28 are pending in the application. It is gratefully acknowledged that Claims 5-12 and 20-28 have been allowed. It is also respectfully acknowledged that Claim 4 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner rejected Claims 1, 2, 15-16 and 19 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,188,698 to *Galand et al.* (hereinafter *Galand*). The Examiner rejected Claims 3 and 17-18 under 35 U.S.C. §103(a) as unpatentable over *Galand*.

Regarding the rejection of independent Claims 1 and 15, the Examiner refuted the arguments presented in the Response dated June 2, 2006 and reasserted the §102 rejection. Specifically, it was argued that in *Galand*, only one determination and calculation is performed (i.e., a color determination), and the same color determination cannot be used to anticipate both the “determining a parameter” and “calculating a value” recitations of the claims as, by definition and usage, the “parameter” is not equivalent to the “value”. In the Response to Arguments, the Examiner alleged *inter alia* that, “the features upon which applicant relies (i.e., “parameter” being not equivalent to the “value”) are not recited in the rejected claim(s),” and cites the following case law from *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993): “Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.” It is respectfully asserted that the Examiner’s reasoning is flawed in at least the following aspects.

First, without delving into the merits of *In re Van Geuns*, it is respectfully asserted that Applicant is not attempting to have limitations from the specification read into the claims. A quick glance through the specification does not reveal any statement or limitation that “parameter” is not equivalent to “value” herein. As such, it is respectfully submitted that the Examiner’s citation is totally inapplicable to the rejected claims.

Second, it is clear and obvious from the body of Claims 1 and 15 that “determining a parameter” is not equivalent to “calculating a value”. The claims do not have to state in words that the two recitations are not equivalent, in order for it to be readily apparent that they are not equivalent, requiring the Examiner to treat them as not equivalent. To wit, Claims 1 and 15 recite *inter alia*, “determining a parameter”, and in a subsequent step or operation, “calculating a value used to classify the service class of the packet data using the parameter.” In other words, the parameter is used to calculate the value. Hence, there can be no doubt that the two are not equivalent. If the two were equivalent, then it is respectfully asserted that there would be absolutely no need for the “calculating a value” step. Applying *Galand* to Claims 1 and 15, as the Examiner suggests, would leave us with the illogical, redundant and wholly unnecessary method step of calculating a value (the color determination)...using the parameter (the color determination). It is respectfully asserted that this is not only illogical, but also it is not even taught in *Galand*.

Moreover, the present invention claims calculating a value used to classify the service class of packet data. However, *Galand* does not disclose a period of time for measuring the packet data and the threshold value, as recited in Claim 1. Particularly, *Galand* does not disclose the following underlined recitations from Claim 1:

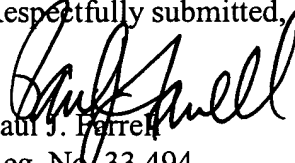
“measuring the total number of packet data for a period of time associated with a classification of service class, determining a parameter based on whether the measured number of packet data is larger than a threshold value associated with a two-way communication characteristic of the packet data transmission.”

Applicant respectfully submits that at least in view of the foregoing, the §102(e) rejection of Claims 1, 2, 15-16 and 19 is incorrect, and should be withdrawn. For at least the same reasons, it is respectfully submitted that the §103(a) rejection of Claims 3 and 17-18 should be withdrawn.

Independent Claims 1 and 15 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2-3 and 16-19, these are likewise believed to be allowable by virtue of their dependence on their respective independent claims. Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2-3 and 16-19 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-12 and 15-28, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,


Paul J. Barrese
Reg. No. 33,494
Attorney for Applicant

DILWORTH & BARRESE
333 Earle Ovington Blvd.
Uniondale, New York 11553
Tel: (516) 228-8484
Fax: (516) 228-8516

PJF/RCC/dr